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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 FREEMAN INVESTMENT
11 MANAGEMENT CO., LLC, a
12 Delaware corporation,

Plaintiff,

13 vs.

14 FRANK RUSSELL COMPANY, a
15 Washington corporation, dba
16 RUSSELL INVESTMENT GROUP,

Defendant.

CASE NO. 13-CV-2856 JLS (RBB)

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO FILE
COMPLAINT UNDER SEAL**

17 Presently before the Court is Plaintiff Freeman Investment Management Co.,
18 LLC's ("Plaintiff") Application to File Complaint Under Seal. Having reviewed
19 Plaintiff's Application, the Complaint, and the law, the Court **GRANTS** Plaintiff's
20 Application.

21 While "the courts of this country recognize a general right to inspect and copy
22 public records and documents," "the right to inspect and copy judicial records is not
23 absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597, 598 (1978). The Ninth
24 Circuit has adopted a "middle-ground stance" concerning the public disclosure of
25 judicial records. *See Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d
26 1289, 1293 (9th Cir. 1986). This approach requires the district court to start with "a
27 strong presumption in favor of access." *Kamakana v. City & Cnty. of Honolulu*, 447
28 F.3d 1172, 1178 (9th Cir 2006). The party seeking to seal the document "then bears the

1 burden of overcoming this strong presumption.” *Id.* (citations and internal quotations
2 marks omitted). This burden varies depending on whether the documents are attached
3 to a dispositive or a non-dispositive motion. *Nygren v. Hewlett-Packard Co.*, at *2
4 (N.D. Cal. May 25, 2010).

5 If the documents are attached to a non-dispositive motion, the party need only
6 establish “good cause” pursuant to Federal Rule of Civil Procedure 26(c). *Id.* If the
7 documents are attached to a dispositive motion, however, “the party must articulate
8 compelling reasons supported by specific factual findings.” *Kamakana*, 447 F.3d 1178
9 (internal quotation marks, alterations, and citations omitted). “In general, compelling
10 reasons . . . exist when such court files might have become a vehicle for improper
11 purposes, such as the use of records to gratify private spite, promote public scandal,
12 circulate libelous statements, or release trade secrets,” or where a party’s “residual
13 privacy rights” are threatened. *Id.* at 1179 (citing *Nixon*, 435 U.S. at 598; *Valley Broad.*
14 *Co.*, 798 F.2d at 1294); *Valley Broad. Co.*, 798 F.2d at 1294. The district court must
15 weigh the party’s interests against “the general history of access and the public policies
16 favoring disclosure.” *Kamakana*, 447 F.3d 1178 (internal quotation marks and citation
17 omitted).


18 Here, Plaintiff argues that sealing the Complaint is necessary because it “contains
19 an agreement that is by its terms confidential and is the type of record that is routinely
20 sealed,” and the Complaint discusses this confidential agreement and “confidential
21 communications exchanged subject to the agreement” at length. (Appl. to File Under
22 Seal 2.) Further, Plaintiff alleges that “[t]he parties have already agreed to preserve the
23 confidentiality of this information.” (*Id.*) A review of the Complaint and attached
24 exhibits reveals that a significant amount of proprietary information is disclosed therein.
25 The Court finds that the harm to Plaintiff if these trade secrets were to be released
26 outweighs the public interest in the disclosure of court documents.

27 In light of the foregoing, the Court finds that Plaintiffs have alleged compelling
28 reasons to file the Complaint under seal. Accordingly, the Court **GRANTS** Plaintiff’s

1 Application, without prejudice to the Court modifying this Order at a later time.

2 **IT IS SO ORDERED.**

3 DATED: December 6, 2013

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5 Honorable Janis L. Sammartino
6 United States District Judge
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